

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Sudeen G. Kelly.

Midwest Independent Transmission System
Operator, Inc.

Docket Nos. ER06-665-000
ER06-667-000
ER06-708-000

ORDER REJECTING INTERCONNECTION AGREEMENTS

(Issued April 24, 2006)

1. In this order we reject two Large Generator Interconnection Agreements (Interconnection Agreements) among Midwest Independent Transmission System Operator, Inc. (Midwest ISO) as Transmission Provider, MinnDakota Wind, LLC (MinnDakota) as Interconnection Customer, and Northern States Power Company d/b/a Excel Energy (Northern States) as Transmission Owner, filed in Docket Nos. ER06-665-000 and ER06-667-000. We also reject an Interconnection Agreement among Midwest ISO, Northern States Power Company d/b/a Excel Energy-Generation Function (Northern States' generation function) as Interconnection Customer, and Northern States Power Company d/b/a Excel Energy-Transmission Function (Northern States' transmission function) as Transmission Owner, filed in Docket No. ER06-708-000.

Background

2. On July 8, 2004, the Commission accepted in part and rejected in part Midwest ISO's proposed Large Generator Interconnection Procedures (LGIP) and *pro forma* Large Generator Interconnection Agreement (LGIA) filed in compliance with Order Nos. 2003 and 2003-A,¹ to become effective as of July 8, 2004.² Among other things, in the July 8

¹ *Standardization of Generator Interconnection Agreement and Procedures*, Order No. 2003, 68 Fed. Reg. 49,845 (Aug. 19, 2003), FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, 69 Fed. Reg. 15,932 (Mar. 26, 2004), FERC Stats. & Regs. ¶ 31,160 (2004), *order on reh'g*, Order No. 2003-B, 70 Fed. Reg. 265 (Jan. 4, 2005), FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, 70 Fed. Reg. 37,661 (June 30, 2005), FERC Stats & Regs. ¶ 31,190 (2005).

² *Midwest Independent Transmission System Operator, Inc.* 108 FERC ¶ 61,027 (2004), *order on reh'g*, 109 FERC ¶ 61,085 (2004) (July 8 Order). The LGIP and *pro forma* LGIA were originally included as Attachment X of Midwest ISO's Open Access (continued...)

Order, the Commission accepted Midwest ISO's transmission service crediting proposal in Article 11 of the Attachment X *pro forma* LGIA, which generally implemented the default pricing methodology adopted in Order No. 2003.³ We also accepted Midwest ISO's proposal that deferred transmission service credits in certain circumstances until network upgrades built for an interconnection customer were actually needed or used, and we conditionally accepted Midwest ISO's proposal such that interest would not accrue during the deferral period.⁴

3. On February 3, 2006, the Commission, among other things, conditionally accepted Midwest ISO's proposed revisions to the transmission service crediting provisions provided in Article 11 of the Attachment X *pro forma* LGIA.⁵ Specifically, the Commission accepted Midwest ISO's proposal under which an interconnection customer would receive transmission service credits up to fifty percent of the total amount paid for the network upgrades, if the output of the generating facility was committed by a contract of at least one year to serve Midwest ISO network customers or the generating facility had been designated as a network resource at the commencement of commercial operation. If the interconnection customer committed only a portion of the generator facility's capacity, this cost sharing would be pro rated accordingly. Otherwise, if the interconnection customer could not demonstrate such commitment at or before the beginning of commercial operation, network upgrade costs would be fully assigned to the interconnection customer. Those costs not assigned to the interconnection customer would be recovered from transmission owners based on cost and voltage thresholds and according to the methodology applied to baseline reliability projects.⁶ The Commission made Midwest ISO's revisions to Article 11 of the Attachment X *pro forma* LGIA effective February 5, 2006, as requested.⁷

Transmission Tariff, but were subsequently transferred to Attachment X of Midwest ISO's Open Access Transmission and Energy Markets Tariff upon commencement of Midwest ISO's Energy Markets.

³ *Id.* at P 38.

⁴ *Id.* at P 40-58.

⁵ *Midwest Independent Transmission System Operator, Inc.*, 114 FERC ¶ 61,106 (2006), *reh'g pending* (February 3 Order).

⁶ *Id.* at P 46.

⁷ *Id.* at P 1.

4. In the February 3 Order, the Commission also found that Midwest ISO had not proposed in its filing to modify the applicable tariff language as to existing generator interconnection agreements. Thus, we stated that generator interconnection agreements filed before February 5, 2006 must conform to the Attachment X *pro forma* LGIA that was in effect before February 5, 2006, and generator interconnection agreements filed on or after February 5, 2006 must conform to the newly effective Attachment X *pro forma* LGIA. The Commission added that this was without prejudice to Midwest ISO's ability to seek modification to the applicable tariff language as to existing generator interconnection agreements.⁸

Midwest ISO's Instant Filings

5. On February 23, 2006, in Docket Nos. ER06-665-000 and ER06-667-000, Midwest ISO filed an executed Interconnection Agreement among MinnDakota, Northern States, and Midwest ISO, in each docket. On March 8, 2006, Midwest ISO filed a third executed Interconnection Agreement, among Northern States' generation function, Northern States' transmission function, and Midwest ISO. Midwest ISO states that the proposed Interconnection Agreements reflect the transmission pricing provisions in Midwest ISO's *pro forma* LGIA provided in Attachment X in effect before February 5, 2006, rather than the new pricing provisions accepted in the February 3 Order and made effective on February 5, 2006.⁹

6. In support of its filings in Docket Nos. ER06-665-000, ER06-667-000, and ER06-708-000, Midwest ISO asserts that the proposed Interconnection Agreements were executed by all the parties before the February 3 Order was issued, and that Midwest ISO was in the process of preparing the filing of the Interconnection Agreements when the February 3 Order was issued. Therefore, Midwest ISO argues that the Interconnection

⁸ *Id.* at P 70, 115.

⁹ On September 12, 2005, as amended September 15 and 16 and December 15, 2005, Midwest ISO filed, in Docket Nos. ER05-1475-000, ER05-1475-001, ER05-1475-002, and ER05-1475-003, various proposed revisions to its *pro forma* LGIA. By order dated February 13, 2006, the Commission conditionally accepted those proposed revisions to take effect November 16, 2005, and directed a compliance filing. *Midwest Independent Transmission System Operator, Inc.*, 114 FERC ¶ 61,134 (2006) (February 13 Order). Midwest ISO states that the proposed Interconnection Agreements are based on the version of Midwest ISO's *pro forma* LGIA that was pending in Docket No. ER05-1475-000, *et al.*, on the date that the Interconnection Agreements were executed, prior to issuance of the February 13 Order, and therefore do not include the revisions directed therein. However, Midwest ISO requests that the Commission accept the Interconnection Agreements subject to modification to reflect the revisions directed in the February 13 Order.

Agreements conform to Midwest ISO's Attachment X *pro forma* LGIA that was effective on the date of execution. Midwest ISO adds that all the parties to the proposed Interconnection Agreements support retaining the Article 11.4 pricing provisions in Midwest ISO's Attachment X *pro forma* LGIA in effect prior to February 5, 2006.

7. Midwest ISO also asks that the Commission waive our sixty-day prior notice provisions so that the Interconnection Agreements are effective on February 24, 2006, in Docket Nos. ER06-665-000 and ER06-667-000, and effective on March 9, 2006, in Docket No. ER06-708-000.

Notice of Filings

8. Notices of Midwest ISO's filings in Docket Nos. ER06-665-000 and ER06-667-000 were published in the *Federal Register*, 71 Fed. Reg. 12,351 (2006), with comments, protests, and interventions due on or before March 16, 2006. None were filed. Notice of Midwest ISO's filing in Docket No. ER06-708-000 was published in the *Federal Register*, 71 Fed. Reg. 14,195 (2006), with comments, protests, and interventions due on or before March 29, 2006. On March 29, 2006, Xcel Energy Services Inc. (Xcel) filed a motion to intervene, raising no substantive issues.

Discussion

Procedural Matters

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the timely, unopposed motion to intervene of Xcel in Docket No. ER06-708-000 serves to make it a party in this proceeding.

Interconnection Agreements

10. In Order No. 2003, the Commission required transmission providers (such as Midwest ISO) to file *pro forma* interconnection documents and to offer their customers interconnection service consistent with these documents. The use of *pro forma* documents ensures that interconnection customers receive non-discriminatory service and that all interconnection customers are treated on a consistent and fair basis. Using *pro forma* documents also streamlines the interconnection process by eliminating the need for an interconnection customer to negotiate each individual agreement. This reduces transaction costs, and reduces the need to file interconnection agreements with the Commission to be evaluated on a case-by-case basis.¹⁰

¹⁰ Order No. 2003 at P. 10 ("it has become apparent that the case-by-case approach is an inadequate and inefficient means to address interconnection issues").

11. At the same time, the Commission recognized in Order No. 2003 that there would be a small number of extraordinary interconnections where reliability concerns, novel legal issues or other unique factors would call for the filing of a non-conforming agreement.¹¹ The Commission made clear that the filing party must clearly identify the portions of the interconnection agreement that differ from its *pro forma* agreement and explain why the unique circumstances of the interconnection require a non-conforming interconnection agreement.¹²

12. In the instant proceedings Midwest ISO states that the Interconnection Agreements filed on February 23, 2006 and March 8, 2006 reflect the transmission pricing provisions in Midwest ISO's *pro forma* LGIA provided in Attachment X in effect before February 5, 2006. In support of its filings, Midwest ISO's argues that the three Interconnection Agreements were executed prior to the February 5, 2006 effective date, and that the parties support retaining the Article 11.4 pricing provisions in Midwest ISO's Attachment X *pro forma* LGIA in effect prior to February 5, 2006.

13. We find Midwest ISO's arguments unpersuasive. In the February 3 Order, the Commission granted the Midwest ISO's request that we make the proposed revisions effective February 5, 2006, and explicitly stated that generator interconnection agreements filed (emphasis added) on or after February 5, 2006 would have to conform to the newly effective Attachment X *pro forma* LGIA accepted in that order. The Commission added that this was without prejudice to Midwest ISO's ability to seek modification to existing generator interconnection agreements.¹³ Thus, we find that the three Interconnection Agreements in these proceedings deviate from Midwest ISO's Attachment X *pro forma* LGIA by not adopting the transmission pricing provisions accepted in the February 3 Order that became effective for all Midwest ISO interconnection agreements filed on or after February 5, 2006. Furthermore, we find that Midwest ISO has not supported the deviations in a way that demonstrates that the variations from the *pro forma* are necessary to reflect operating requirements, novel legal issues or other unique factors that would warrant deviation from the *pro forma* LGIA.

14. Moreover, we note that if Midwest ISO or any of the parties to the Interconnection Agreements were subsequently dissatisfied with the effective date in the February 3 Order, they should have sought to change the effective date on a generally applicable

¹¹ *Id.* at P 913-15.

¹² Order No. 2003-B at P 140 ("each Transmission Provider submitting a non-conforming agreement for Commission approval must explain its justification for each nonconforming provision.").

¹³ February 8 Order at P 70; P 115.

basis to all Midwest ISO interconnection agreements by filing a request for rehearing of the February 3 Order, but they did not. Therefore, in order to ensure that all similarly situated interconnection customers are treated on a consistent, fair and not unduly discriminatory basis, we will reject the non-conforming Interconnection Agreements filed in Docket Nos. ER06-665-000, ER06-667-000, and ER06-708-000.¹⁴

The Commission orders:

Midwest ISO's proposed Interconnection Agreements filed in Docket Nos. ER06-665-000, ER06-667-000, and ER06-708-000 are hereby rejected, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

¹⁴ See *Midwest Independent Transmission System Operator*, 114 FERC ¶ 61,256 (2006) at P 8 (any LGIA that conforms to Midwest ISO's *pro forma* LGIA will only be required to be reported in Midwest ISO's quarterly transaction report and not filed here with the Commission), citing *Revised Public Utility Filing Requirements*, Order No. 2001, 67 Fed. Reg. 31,043 (May 8, 2002), FERC Stats. & Regs. p. 31,127 at P 7 (2002). The Interconnection Agreements will be subject to modification to reflect the revisions directed in the February 13 Order. See *supra* note 9.